IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4975 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASMUKHLAL LAHERCHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4975 of 2000

MR NM KAPADIA for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR UM SHASTRI for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 2

MR PT JASANI for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 04/07/2001

ORAL JUDGEMENT

The applicant accused has filed this application under Section 482 of the Criminal Procedure Code and prayed that the complaint being Criminal Case No. 207 of 1998 filed by the complainant - respondent No.2 before the Court of learned JMFC, Ahmedabad (Rural) for the offence under Section 138 of the Negotiable Instruments Act, be quashed.

The aforesaid complaint was filed by the complainant against the applicant accused on 29.4.1998, directly before the Court of learned JMFC, Court No.2, Ahmedabad (Rural) and almost simultaneously within two days from the filing of the complaint, he also filed Civil Suit No. 2300 of 1998 before the competent Civil Court for recovery of the amount.

Thus, from the aforesaid facts, prima-facie it appears that there is a dispute between the parties of a civil nature. However, on return of the cheque dated 31.3.1998 of Rs. 80,000/-, the complaint was filed by the complainant for the offence under section 138 of the Negotiable Instruments Act and also under section 420 of the IPC. The learned Magistrate has taken cognizance only for the offence under section 138 of the Negotiable Instruments Act.

It appears from the record that during the pendency of the complaint as well as Civil suit, compromise talks were going on between the parties and in fact the applicant accused paid an amount of Rs. 60,000/in instalments to the respondent No.2 - complainant which were admittedly accepted by the complainant. Somehow or the other, remaining amount of Rs. 20,000 was not accepted by the complainant and it appears that he backed out and insisted to go on with the aforesaid complaint filed by him before the Criminal Court.

Under the circumstances, applicant accused was obliged to file this application under section 482 of the Cr.P.C. In view of the above, when this matter was placed before my learned brother D.P.Buch, J. on 6.9.2000 for admission, it was straight-away admitted and the rule was made returnable on 28th Sept. 2000 with ad-interim relief granted in favour of the applicant accused in terms of paragraph 4(B) on the condition that the petitioner accused shall deposit amount of rs. 20,000 before this Court on or before 7.9.2000 as per the statement made at the bar by the learned Counsel Shri Kapadia for the petitioner accused.

Shri Kapadiya, learned Counsel for the petitioner accused submitted that as per the statement made at the bar, applicant accused had already deposited Rs. 20,000/before this Court.

From the order sheet of the Court it appears that the matter was adjourned from time to time and there were some attempts also made to finally put an end to the litigations between the parties, but it seems that for some or the other reason the complainant - respondent Nos. 2 is now not agreeable and insists to go on with the criminal complaint filed by him before the trial Court.

Learned Counsel Shri Mourya now appearing for Mr. Jasani for the respondent No.2 - complainant submitted that even if there were some compromise talks between the parties before the trial Court after filing of the complaint and according to that terms of compromise if the accused had paid substantial amount of Rs. 60,000 out of Rs. 80,000 that would not absolve the petitioner accused from his criminal liability. He submitted that the complainant should be permitted to lead evidence before the trial Court in a complaint filed by him for the offence under section 138 of the Negotiable Instruments Act, and if he succeeds the applicant accused can certainly be convicted by the trial Court. He submitted that the payment of Rs. 60,000 made by the accused during the pendency of the complaint would only be a mitigating circumstance which may be taken into consideration by the trial Court at the time of passing order of sentence. In support of his submission, he has relied upon the judgement of Hon'ble Supreme Court in case of Rajneesh Aggarwal Vs. Amit J. Bhalla, reported in 2001 (1) Crimes 104 (SC).

I have carefully gone through the judgement of the Hon'ble Supreme Court in case of Rajneesh Aggarwal (supra). The facts of that case were totally different and in my considered opinion, the said judgement has no application to the facts of the present case. Therefore, I have refrained myself in narrating the facts of theabove case in detail. However, at the cost of repetition, I would like to say that in the instant case after lodging the complaint the complainant immediately filed Civil Suit for recovery of the amount. It is not unknown to anyone that in our country it takes years for the final adjudication of civil cases. Therefore, by way of pressurise tactics, at times criminal complaints are also filed by the parties. I do not say even for a moment that the complaint should not be filed if the

offence is committed. However, after filing of the complaint and Civil Suit if the person enters in to compromise and started collecting the money and after collecting substantial amount if he backs out, then it cannot be permitted by the Court.

In the instant case, the applicant has already deposited rs. 20,000/- before the Court as per the statement made at the bar. When Mr. Maurya for the respondent No.2 was asked as to whether he wants to withdraw the said amount, he refused to withdraw the same and insisted that the complaint should be allowed to be proceeded with before the trial Court.

Ordinarily, this Court does not interfere with the complaint, but this is an exceptional case where if this Court does not exercise its powers under Section 482 of the Cr.P.C, it would be failing in discharge of its duty. Parties cannot be allowed to make use of criminal Courts as a lever for recovering the amount and when succeeded in such attempts, then atleast they cannot be allowed to prosecute their complaints before the Court. If the complainant succeeds in the Suit filed by him, he will definitely get the amount with interest as and when ordered by the Court, but this is not a case in which the complaint can be allowed to be proceeded further by the trial Court and it will be an abuse of process of law if complaint filed by such complainant is allowed to be prosecuted further.

In view of the aforesaid discussion, this application is allowed and the impugned complaint being Criminal Case No. 207/98 filed by the complainant respondent No.2 Visabhai Ambalal Panchal against the present applicant - accused Hasmukhlal Laherchand Shah for the offence under Section 138 of the Negotiable Instruments Act, before the Court of learned Judicial Magistrate, Court No.2, Ahmedabad (Rural), is hereby quashed and further proceedings pending before the trial Court in pursuance of the aforesaid case is hereby terminated. The application is allowed accordingly. Rule is made absolute.

When the respondent No.2 is not ready to accept the amount of Rs. 20,000 deposited by the applicant accused, then the same shall be refunded to the applicant accused forthwith by A/c payee cheque.

(B.J.Shethna, J.)

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